THE HON'BLE SRI JUSTICE C.V. RAMULU

Thursday, 4th day of January, 2007

W.P.No.24450 of 2006

Between :

Bhukya Pantulu Naik … Petitioner

and

The Government of Andhra Pradesh,
Rep.by its Principal Secretary,
Agriculture & Cooperation (MKTG-I)
Department, Secretariat Buildings,
Hyderabad & others … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

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O R D E R:

This Writ Petition is filed seeking a Mandamus declaring G.O.Ms.No.208, Agriculture and Cooperation (Mktg-I) Department, dated 14-9-2006 issued by the 1st respondent as arbitrary, illegal and contrary to the provisions of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act,1966 (for short 'the Markets Act') and consequently to direct the respondents to reconstitute Yellandu Agricultural Market Committee strictly in accordance with law.

The question that falls for consideration in this Writ Petition is whether the official respondents are right in constituting Agricultural Market Committee at Yellandu, Khammam District and whether the said Market is operative within Yellandu Town or even it could extend to the notified market area of Yellandu.

Under the impugned G.O., by invoking the powers conferred by sub-section (1) of Section 6 read with sub-sections (1) and (2) of Section 5 of the Markets Act as amended, Yellandu Agricultural Market Committee was constituted with Chairman, Vice Chairman and 16 others Members.

Learned counsel for the petitioner stated that in view of Section 4(3)(a) of the Markets Act and also in view of the Judgment of this Court in Writ Petition No.16445 and 17475 of 2006, dated 27-10-2006, wherein it was held that the constitution of

Bhadrachalam Agricultural Market Committee, which is located within the scheduled area, was contrary to the Aims and Objects of Act 16 of 2000, the impugned G.O. is arbitrary, illegal and unconstitutional. Sections 3 to 5 of the Markets Act have to be read harmoniously; otherwise, it frustrates the very aims and objects of Act 16 of 2002 and the interest of scheduled areas.

Sri M. Surender Rao, learned counsel appearing for respondents 3 and 4 strenuously contended that the notified area, notified market area, market committee and establishment of markets are all different aspects. What is prohibited under Section 4(3) of the Markets Act is only establishment of markets in the scheduled areas; therefore, the constitution of market committee is not prohibited. Further, Yellandu, as such, is excluded from the agency area; hence, the impugned G.O. does not suffer from any infirmity, either in law or on facts; as such, the impugned Order cannot be interfered with by this Court. May be, the members constituting the committee are from various villages of Yellandu Mandal, which are included in the agency area. The law does not prohibit constituting a market committee with the persons, who are residing in the agency area. Further, a notified area may include even a scheduled area. What is prohibited is establishment of a market in the notified area and not the constitution of market committee. There is no amendment to the area already notified. Unless the area notified is denotified, the power of the Government in constituting a market committee cannot be taken away for the validly notified area. In this case, it is not the establishment of markets, which is contemplated in the impugned Order and it is the constitution of market committee.

Sri K. Muralidhar Reddy, learned Government Pleader, contended that there are seven Mandals in the notified area of

Yellandu. Under Section 3 of the Markets Act, the market area is covered by 16 kilometres radius. Yellandu Town and Karepalli village in Singareni Mandal are not included in the agency area. In the entire erstwhile Taluk of Yellandu area, as of now, there are only 2 markets; one at Yellandu and the other is a sub-market at Garla. Section 4(3)(a) of the Markets Act prohibits only the establishment of a market and not constitution of market committee for the already notified market area.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and gone through the entire material made available on record including the impugned G.O.

Before going into the merits, it may be necessary to notice that Yellandu Town and Karepalli in Singareni Mandal of erstwhile Yellandu Taluk are excluded from the agency area. Therefore, there is no difficulty for the respondents to constitute a market committee for Yellandu Town. But, the question is while constituting a market committee for Yellandu, the official respondents included members from outside the area of Yellandu Town, which is falling within the agency area, impliedly giving an impression that Yellandu Agricultural Market Committee's operational area also includes agency area. In this regard, it is necessary to notice Sections 3 to 6 of the Markets Act, which read as under:

> "**3. Declaration of notified area:--** (1) The Government may publish in such manner as may be prescribed a draft notification declaring their intention of regulating the purchase and sale of such agricultural produce, livestock or products of livestock in such area s may be specified in such notification.
>
> (2)……..
>
> (3)…….
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> (4) Subject to the provisions of sub-sections (1),(2) and (3), the Government may, by notification—
>
> (a) exclude from a notified area, any area comprised therein; or

(b) include in any notified area, any area specified in such notification; (or)

(c) declare a new notified area by separation of area from any notified area or by uniting two or more notified areas or parts thereof or by uniting any area to a part of any notified area:

Provided that where, as a result of declaration of a new notified area under this clause, the entire area comprised in an existing notified is united to one or more notified areas, the said existing notified area shall stand abolished.

4. Constitution of Market Committee and declaration of notified market area:- (1) The Government shall constitute by a notification a market committee for every notified area from such date as may be specified in the notification and the market committee so constituted shall be a body corporate by such name as the Government may specify in the said notification, having perpetual succession, and a common seal with power to acquire, hold and dispose of property and may, by its corporate name, sue and be sued:

Provided……

(1-A) Any notification made under sub-section (1) for constitution of a new market committee in respect of any new notified area declared under Clause (c) of sub-section (4) of Section 3, may contain such supplemental, incidental and consequential provisions, including provisions as to the composition of new market committee or new and existing market committees and the apportionment of assets and liabilities between the market committees affected thereby

(2) It shall be the duty of the market committee to enforce the provisions of this Act and the rules and bye-laws made thereunder in the notified area.

(3)(a) Every market committee shall establish in the notified area, excluding the scheduled areas, such number of markets as the Government may, from time to time, direct for the purchase and sale of any notified agricultural produce, livestock or products of livestock and shall provide such facilities in the market as may be specified by the Government from time to time, by a general or special order.

(b)……

(c) the market committee shall declare, by notification, the limits of every market established by it under clauses (a) and (b) (hereinafter referred to as the market area).

(4) As soon as may be after the establishment of a

market under sub-section (3), the Government shall declare by notification the market area and such other area adjoining thereto as may be specified in the notification, to be a notified market area for the purposes of the Act in respect of any notified agricultural produce, livestock or products of livestock.

(5) Subjects to the provisions of sub-sections (1),(2),(3) and (4), the Government may, by notification,--

(a) exclude from a notified market area, any area comprised therein; or

(b) include in any notified market area, any area specified in such notification.

5. Composition of Market Committee:- (1) Every market committee shall consist of fourteen members and shall be constituted by the Government by notification in the following manner:

6. Reconstitution of the Market Committee:- (1) The Government shall reconstitute the market committee on the expiration of the term of office of the members of the market committee or of the term as extended under sub-section (2)
(2) and (3)……."

Section 3 of the Markets Act contemplates declaration of notified area and as per Section 3, Yellandu, Singareni, Sirpur and Kothaguda were declared as notified areas. Sub-section (4) of section 3 contemplates that subject to the provisions of sub-sections (1) to (3), the Government may, by a notification, exclude from a notified area, any area comprised therein or include in any notified area, any area specified in such notification or declare a new notified area by separation of area from any notified area or by uniting two or more notified areas or parts thereof or by uniting any area to a part of any notified area. As a result of declaration of new notified area, the entire area comprised in the existing notified area is united to one or more notified areas and the existing notified area shall stand abolished. Section 4 of the Markets Act contemplates constitution of market committee and declaration of notified market area. Any notification

made under sub-section (1) of Section 4 for constitution of a new market committee in respect of any new notified area declared under clause (c) of sub-section (4) of Section 3, may contain such supplemental, incidental and consequential provisions, including provisions as to the composition of new market committee or new and existing market committees and the apportionment of assets and liabilities between the market committees affected thereby and it is for the market committee to enforce the provisions of the Markets Act.

Sub-Section 3(a) of Section 4 of the Markets Act contemplates that every market committee shall establish in the notified area, such number of markets as the Government may from time to time direct for the purchase or sale of any notified agricultural produce, livestock etc., except in scheduled areas. Every market committee shall also establish in the notified area, such number of markets as the Government may, from time to time, direct for the purchase and sale of vegetables etc. Under Clause (c) of sub-section (3) of Section 4, the market committee shall declare, by notification, the limits of every market established by it under clauses (a) and (b). As soon as the market is established under sub-section (3), the Government shall declare by notification the market area and such other area adjoining thereto as may be specified in the notification, to be a notified market area for the purposes of the Markets Act. The Government also may exclude from a notified market area, any area comprised therein or include in any notified market area, any area specified in such notification.

This all shows that firstly notified area is declared under Section 3, which is subject to modifications by notification etc. Likewise, under Section 4, the constitution of market committees and declaration of a notified market area is contemplated. Of course, every market

committee constituted also shall establish in the notified area, such number of markets and as soon as after establishment of a market under sub-section (3), the Government shall declare by notification market area and such other area adjoining thereto as may be specified in the notification, to be notified market area for the purposes of the Markets Act.

It is an undisputed fact that under Section 3 of the Markets Act, the notified area of the market committee has been notified as under:

Sl.No.	Name of the District	Notified areas for constitution of Market committee
XIV.	Khammam	1. Khammam taluq 2. Kothagudem taluq 3. Madhira taluq 4. Yellandu taluq 5. Bhadrachalam, Nugur and Burgampahad taluqs

and the notified market has been notified as under:

Sl.No.	Name of the Market committee/Strength of the market committee	Name of the notified market
4	**Khammam District** Yellandu (18)	1. Yellandu 2. Garla 3. Tekulapalli 4. Bayyaram

As per S.R.O. 1031 of the Scheduled Areas (Part-B, States) Order, 1950, all the villages of Yellandu taluq of Warangal District (excluding the Yellandu, Singareni and Sirpur villages and the town of kothaguda) were declared to be scheduled areas.

Now the question is whether after Act 16 of 2000, it still can be said to be notified area and notified market area have not been denotified and therefore, the official respondents have all the authority

under the law to constitute a market committee to the already existing markets and whether the earlier notifications issued declaring notified area and markets are impliedly nullified by Act 16 of 2000 by harmonious reading of Sections 3 to 5 together.

Admittedly, Act 16 of 2000 has been brought into force with effect from 29-4-2000. Thus, Section 4(3)(a) contemplates, every market committee shall establish in the notified area (excluding the scheduled areas); therefore, the establishment of markets in the notified area, though it is located in the scheduled areas is prohibited. May be, the notified areas are already declared as per Section 3 including in the scheduled areas, but as soon as Act 16 of 2000 has come into force, all the markets established and market committees constituted will have to be treated as nullified by way of legislative act i.e. Act 16 of 2000. Therefore, I cannot agree with the submissions made by Sri M.Surender Rao, learned counsel for respondents 3 and 4 that the notified areas under Section 3 read with Sections 4 and 5 of the Markets Act would indicate that they will only deal with constitution and composition of market committees and to this effect, there is no prohibition; therefore, the impugned G.O. is valid.

In fact, establishment of the market in the notified area by the market committee is excluded in the scheduled areas. As per Section 4(4) of the Markets Act, after establishment of markets under sub-section (3), Government shall declare, by notification, the market area and such other area adjoining thereto as may be specified in the notification to be notified market area for the purposes of the Markets Act. Therefore, assuming that only establishment of market in the scheduled area is prohibited, the very object of the amendment is exclusion of establishment of any market in the scheduled area. In this regard, earlier, I have already taken a view in W.P.Nos.16445 and

17475 of 2006 as under:

> "It may also be necessary to notice the Statement of objects and Reasons of Andhra Pradesh (Agricultural Produce and Livestock) Markets (Amendment) Act, 2000 (Act No.16 of 2000), which reads as under:
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> " **Statement of Objects and Reasons:**
>
> The Government of India, by the provisions of the Panchayats (Extension to the Scheduled Areas) Act,1996 (Central Act 40 of 1996) passed by the Parliament and received the assent of the President of India on the 24th December,1996 have provided for extension of the provisions, of Part IX of the Constitution relating to the Panchayats to the Scheduled Areas also.
>
> According to Section 4(m)(iv) of that Act, the power to manage village markets by whatever name called shall be vested with Panchayats in Scheduled Areas.
>
> According to Section 4(3)(a) of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966, (A.P. Act 16 of 1966) the Market Committee is responsible to establish and manage markets even in Scheduled Areas, since the provisions of the two Acts are overlapping, it is decided to amend the State Act, suitably, to be in tune with the provisions of the Central Act."

The purport of Act 16 of 2000 is exclusion of establishment of any market in the scheduled areas. The insertion of words "excluding the Scheduled areas" in Section 4(3)(a) of the Act is nothing but substitution of the words in the Section. Law, in this regard, is well settled that whenever there is a substitution/insertion of a particular provision, it must be deemed that it had come into force from the date when the law was originally enacted. Further, it is a declaration, by law, as to excluding the scheduled areas from the purview of the provisions of the Act. A declaratory law shall have retrospective effect automatically, unless there is an express provision to show that it has no retrospective operation. Learned counsel for the petitioners, in this regard, rightly relied upon the Judgment in **ZILE SINGH v. STATE OF HARYANA**[1] and drawn attention of the Court to paragraph-14, which reads as under:

> "14. The presumption against retrospective operation is not applicable to declaratory statutes.....In determining, therefore, the

nature of the Act, regard must be had to the substance rather than to the form. If a new Act is 'to explain' an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended.....An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect."

From Act 16 of 2000 it is clear that it is an explanatory Act passed to supply an obvious omission. Therefore, in the aims and objects, it was made clear that the provisions of Panchayats (Extension to the Scheduled Areas) Act,1996 (Central Act 40 of 1996) passed by the Parliament provided for extension of the provisions of Part IX of the Constitution relating to Panchayats to the scheduled areas also. As per Section 4(m)(iv) of the said Act, the power to manage village markets, by whatever name called, shall be vested with Panchayats in scheduled areas. The amendment by way of Act 16 of 2000 is to be in tune with the Central Act 40 of 1996, Part IX and Schedule V of the Constitution of India."

Central Act 40 of 1996 is an Act, which provides for extension of provisions of Part IX of the Constitution relating to Panchayats to scheduled areas. While doing so, the Central Act contemplates that the Legislature of a State shall not make any law under that part, which is inconsistent with any of the features as enumerated under Section 4 thereof. It is relevant to notice Section 4 of the Panchayats (Extension to the Scheduled Areas) Act,1996, which reads as under:

"**4. Exceptions and modifications to Part IX of the Constitution:-** Notwithstanding anything contained under Part IX of the Constitution, the Legislature of a State shall not make any law under that Part, which is inconsistent with any of the following features, namely—

(a) a State legislation on the Panchayats that may be made shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources;

(b) a village shall ordinarily consist of a habitation or a group of

habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs;

(c) every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayat at the village level;

(d) to (l)…….

(m) while endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State Legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with---

(i) to (iii)…….

(iv) the power to manage village markets by whatever name called."

Further, Act 16 of 2000 nullifies extension of any notified area declared under Section 3 or markets declared thereunder to scheduled areas, since the very object and reasons of the said Act to be in consonance with the provisions of the Central Act i.e. Panchayats (Extension to Schedule Areas) Act,1966 passed by the Parliament. Section 4 of Central Act, as noticed above, contemplates about the exceptions and modifications to Part IX of the Constitution. It provides that the Legislature of a State shall not make any law under that part, which is inconsistent with any of the features enumerated therein. Section 4(m)(iv) of Central Act provides that while endowing Panchayats in the scheduled areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State Legislature shall ensure that the Panchayats at the appropriate level and Gram Sabha are endowed specifically with the power to manage the village markets by whatever name called. Therefore, A.P. Act 16 of 2000 was enacted. Thus, in view of Act 16 of 2000, the very declaration of notified area and notified market area, gets dissolved automatically. Therefore, firstly, I am of the view that no market can be constituted as per Section 4 of the Markets Act or a

declaration of notified market area can be made in view of exclusion of scheduled areas as per Section 4(3)(a) of the Markets Act. As contended by the learned counsel for the petitioner, the theory of purposeful and harmonious construction needs to be pressed into service for the purpose of this case. Otherwise, the very purpose of Act 16 of 2000 is defeated and further it frustrates the interest of the scheduled areas. Act 16 of 2000 and Panchayats (Extension to the Scheduled Areas) Act,1996, provide for extension of provisions of Part IX of Constitution of India relating to panchayats to scheduled areas and contemplates that the panchayats located in the scheduled areas are endowed with the power to manage the markets by whatever name called to enable them to function as institutions of self-Government.

Act 16 of 2000 contemplates exclusion of the scheduled areas from the purview of the Markets Act. May be, the exclusion is as to establishment of a market. But, once the establishment of a market is prohibited, the question of existence of notified area and notified market area does not remain intact and if that is not so, it does not serve any purpose. Therefore, the exclusion clause may have to be given a liberal construction, if the purpose behind it so requires. In this case, definitely, the purpose of exclusion of establishment of markets in scheduled areas is to enable the Panchayats in the scheduled areas to function as institutions of self-Government. Therefore, there cannot be any doubt as to the implied exclusion and dissolution of notified area and notified market area constituted under the Markets Act. The construction of such provisions should be made purposeful to suppress the mischief and advance the remedy and to add force and life to the cure and remedy according to the true intent of Act 16 of 2000. If that is to be taken into consideration, it must be deemed that all other provisions of the Act also have no application for the

scheduled areas for the purpose of notified area, notified market area, constitution of market committee, establishment of markets etc., and there is a complete exclusion of the provisions of the Markets Act.

Apart from following the rule of harmonious construction, inconsistent and repugnancy have to be avoided. A statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statue. Such a construction has the merit of avoiding any inconsistency or repugnancy either within a Section or between a Section and other parts of the statute. Whenever it is possible to avoid a clash between two Sections of the same Act, to construe provisions which appears to be in conflict so that they harmonize. It should not be lightly assumed that the Legislature had given with one hand what it took away with the other. If the argument of the learned counsel for the respondents is to be accepted, that amounts to what has been given with one hand is being taken away by the other. It is a recognized rule of interpretation of statutes that the expression used therein should ordinarily be understood in a sense in which they best harmonize with the object of the statute and which effectuate the object of the legislature. If an expression is susceptible of a narrow or technical meaning, as well as a popular meaning, the Court would be justified in assuming that the legislature used the expression in the sense which would carry out its object and reject that which renders the exercise of its powers invalid.

In this regard, it may be necessary to notice the Judgment of the Apex Court reported in **STATE OF RAJASTHAN v. GOPI KISHAN SEN**[2] wherein it was held as under:

> "6…..…….The rule of harmonious construction of apparently conflicting statutory provisions is well-established for upholding and giving effect to all the

> provisions as far it may be possible, and for avoiding the interpretation which may render any of them ineffective or otiose……"

In **ANWAR HASAN KHAN v. MOHD. SHAFI**[3] the Supreme Court held as under:

> "8. It is settled that for interpreting a particular provision of an Act, the import and effect of the meaning of the words and phrases used in the statute have to be gathered from the text, the nature of the subject-matter and the purpose and intention of the statute. It is a cardinal principle of construction of a statute that effort should be made in construing its provisions by avoiding a conflict and adopting a harmonious construction. The statute or rules made thereunder should be read as a whole and one provision should be construed with reference to the other provision to make the provision consistent with the object sought to be achieved. The well-known principle of harmonious construction is that effect should be given to all the provisions and a construction that reduces one of the provisions to a "dead letter" is not harmonious construction….."

It is settled that the provisions of one Section of a statute cannot be used to defeat those of another, unless it is impossible to effect reconciliation between them. In the present case also, it is very clear that there cannot be two opinions in the matter of establishment of markets, one in the non-agency areas and the other an independent one in the scheduled areas separately. No agency area can be included along with the non-agency area. The scheduled areas must be separated from the non-scheduled areas for the purpose of notified area, notified market area, constitution of market, establishment of markets etc. Otherwise, the very purpose of Act 16 of 2000 read with Central Act 40 of 1996 is defeated. Further, Act 40 of 1996 is a Central Act and Act 16 of 2000 is a State Act. The very object of Act 16 of 2000 is to amend the law to be in consonance with the Central Act 40 of 1996 and it cannot be said that the State and Central legislations

are fully inconsistent and absolutely irreconcilable. It is nothing but exclusion of a particular area from the operation of the Act. Therefore, there is necessity of pressing into service the rule of harmonious construction while construing the provisions of one statute apparently inconsistent with the provisions of another related statute have to be harmonized and reconciled in the light of the objects and purpose of the legislation.

For all the above reasons, the impugned G.O. is liable to be set aside and is accordingly set aside insofar as constituting the market committee with the persons, who are residing in the agency areas and extending the operational area of Yellandu into the scheduled areas. It is always open for the Government to constitute a market committee for Yellandu Town, i.e., the area which is not included in the scheduled areas, as per law.

Accordingly, the Writ Petition is allowed. No order as to costs.

04-01-2007

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[1] 2004(8) SCC 1

[2] 1993 Supp (1) SCC 522

[3] 2001(8) SCC 540